

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2294 Session of
2008

INTRODUCED BY D. EVANS, DALEY, BLACKWELL, DeLUCA, GEORGE,
HARKINS, JOSEPHS, KORTZ, MUNDY, PASHINSKI, WATERS AND
WHEATLEY, MARCH 5, 2008

REFERRED TO COMMITTEE ON COMMERCE, MARCH 5, 2008

AN ACT

1 Providing for the licensure of persons providing debt management
2 services and for the powers and duties of the Department of
3 Banking; requiring surety bonds; prohibiting certain fees and
4 costs; providing for debt management plans; and prohibiting
5 certain acts by persons providing debt management services.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Debt
10 Management Services Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Consumer." An individual who owes money for personal,
16 family or household expenses to at least one creditor. The term
17 does not include an individual who owes money for business debt.

18 "Consumer education program." A program designed to improve
19 a consumer's ability to manage the consumer's personal finances

1 and that includes the following: budgeting, saving, investing,
2 managing debt and maintaining creditworthiness.

3 "Debt management services." The service of receiving funds
4 periodically from a consumer under a debt management services
5 agreement and then distributing those funds to creditors of the
6 consumer in partial or full payment of the consumer's debts.

7 "Department." The Department of Banking of the Commonwealth.

8 "Person." An individual, corporation, partnership or other
9 entity legally recognized by the Commonwealth for business
10 purposes that provides debt management services.

11 "Secretary." The Secretary of Banking of the Commonwealth.

12 Section 3. License required.

13 No person may provide debt management services unless the
14 person is licensed by the department.

15 Section 4. Nonapplicability.

16 This act shall not apply to the following persons when they
17 are engaged in the regular course of their respective businesses
18 or professions:

19 (1) Attorneys who are admitted to the bar of this
20 Commonwealth and provide legal services within an attorney-
21 client relationship.

22 (2) Certified public accountants who are licensed by the
23 Commonwealth and provide accounting services within an
24 accountant-client relationship.

25 (3) Financial institutions chartered under Federal or
26 State law.

27 (4) Title insurance companies licensed under the act of
28 May 17, 1921 (P.L.682, No.284), known as The Insurance
29 Company Law of 1921, or their agents.

30 (5) Judicial officers or persons acting under court

1 order.

2 Section 5. Application for licensure.

3 An application for a license under this act shall be
4 submitted to the department in the form required by the
5 department and shall include following:

6 (1) The applicant's name, address, telephone number,
7 electronic mail address and Internet website.

8 (2) The address of each location in the Commonwealth
9 where the applicant will provide debt management services.

10 (3) The name and address of each owner, officer,
11 director or principal of the applicant.

12 (4) The name and address of the applicant's agent for
13 service of process in this Commonwealth.

14 (5) A description of the ownership interest of any
15 officer, director, agent or employee of the applicant in an
16 affiliate or subsidiary of the applicant or in any other
17 business entity that will provide any service to the
18 applicant or to a consumer relating to the applicant's
19 provision of debt management services.

20 (6) A list of other states in which the applicant
21 engages in the business of providing debt management
22 services, including any relevant license or registration
23 number and information regarding whether a license or
24 registration in another state has ever been suspended or
25 revoked.

26 (7) The financial statement from the applicant's most
27 recent fiscal year, including an audit opinion from an
28 independent certified public accountant.

29 (8) A copy of a liability or fidelity insurance policy
30 that insures against dishonesty, fraud, theft or other

malfeasance on the part of the applicant's employees,
officers, directors or principals.

(9) A copy of the applicant's standard debt management
services agreement.

(10) Information regarding the applicant's trust
account, including the name and address of the FDIC-insured
depository institution where the account is located and the
number of the account.

(11) Information regarding the number of the applicant's
credit counselors, supervisors or managers who are certified
by an independent certifying organization acceptable to the
department and a plan to ensure that any of the credit
counselors, supervisors or managers who are not certified
become certified within six months of the issuance date of
the license.

(12) Evidence that the applicant is certified by an
independent certifying organization acceptable to the
department.

(13) A surety bond meeting the requirements of section
6.

(14) A nonrefundable fee of \$1,000.

(15) Any other information that the department requires.
Section 6. Surety bond.

An application for a new license or for renewal of a license
shall contain a surety bond in the amount of \$50,000. The bond
shall run to the Commonwealth for the benefit of any consumer
who is injured by a violation of this act or any regulation
promulgated under this act, when the violation is committed by
the licensee or its agent, including an agent managing the
licensee's trust account. The bond shall be issued by a company

1 authorized to do business in this Commonwealth and approved by
2 the department. The bond shall be conditioned upon the licensee
3 complying with all applicable Federal and State laws.

4 Section 7. Issuance of license.

5 (a) Time for issuance.--The department shall decide whether
6 to issue a license to an applicant within 60 days of receiving
7 the applicant's completed application. If the department needs
8 longer than 60 days to make a decision, it may extend the time
9 period for 30 days. The department shall notify the applicant of
10 the extended time period, including a final decision date, in
11 writing.

12 (b) Investigation.--Upon receipt of a completed application,
13 the department may conduct an investigation of the applicant,
14 including its owners, officers, directors, principals or agents
15 in order to decide whether to issue the license.

16 (c) Appeal of denial.--If the department refuses to issue a
17 license, it shall notify the applicant in writing that the
18 license has been denied, including the reason for the denial and
19 that the applicant has the right to appeal the denial to the
20 secretary within 30 days.

21 (d) Duration.--A license shall be issued for a period of one
22 year.

23 (e) Contents.--The license shall be on a form determined by
24 the department and shall contain, at a minimum, the name of the
25 licensee, the address at which the licensee is conducting
26 business and a license number.

27 (f) Display.--The license shall be displayed prominently at
28 the licensee's business location.

29 (g) Transfer prohibited.--The license shall not be
30 transferred, assigned or pledged.

1 Section 8. Renewal of license.

2 (a) General rule.--An application for renewal of a license
3 shall be submitted to the department on the form determined by
4 the department and in the time period determined by the
5 department. Each application for renewal shall be accompanied by
6 a fee of \$500.

7 (b) Required condition.--The department shall determine the
8 information and documentation that shall be provided in the
9 application for renewal of a license sufficient to establish
10 that the licensee continues to conduct its business in
11 accordance with this act.

12 Section 9. Reasons for denial, suspension, revocation or
13 refusal.

14 The department may deny, suspend, revoke or refuse to renew a
15 license for the following reasons, if committed by the applicant
16 or one of its owners, officers, directors, principals or agents:

17 (1) Made a material misstatement in the license
18 application or any other submission required by this act or
19 the department.

20 (2) Failed to comply with or violated any provision of
21 this act or any regulation, order or statement of policy
22 issued by the department under this act.

23 (3) Engaged in unfair or unethical conduct in connection
24 with the debt management services business.

25 (4) Does not possess the financial responsibility,
26 character, reputation, integrity and general fitness
27 sufficient to warrant the belief that the debt management
28 services business will be conducted lawfully, honestly and in
29 the public interest.

30 (5) Been convicted of or pleaded guilty or nolo

1 contendere to a crime of moral turpitude or to an offense
2 graded as a felony.

3 (6) Been enjoined by a court of competent jurisdiction
4 from engaging in the business of debt management services.

5 (7) Has had a license issued by the department denied,
6 not renewed, suspended or revoked.

7 (8) Became the subject of a United States Postal Service
8 fraud order.

9 (9) Demonstrated negligence or incompetence in
10 performing an act for which the applicant is required to hold
11 a license under this act.

12 Section 10. Reinstatement.

13 The department may reinstate a license that was previously
14 suspended, revoked or denied renewal, if all of the following
15 exist:

16 (1) A condition that warranted the original action has
17 been corrected to the department's satisfaction.

18 (2) The department has reason to believe that the
19 condition is not likely to occur again.

20 (3) The licensee satisfies all other requirements of
21 this act.

22 Section 11. Requirements for providing debt management
23 services.

24 A licensee shall provide debt management services in
25 accordance with the following requirements:

26 (1) The licensee shall provide each consumer for whom it
27 provides debt management services with a consumer education
28 program at no extra cost.

29 (2) Before the licensee and consumer enter into a debt
30 management services agreement, the licensee shall prepare an

1 analysis of the consumer's financial situation and a budget
2 for the consumer. The analysis shall include a determination
3 that the consumer will benefit from debt management services
4 and an explanation of that benefit. The licensee shall
5 discuss the analysis and budget with the consumer and provide
6 copies of them to the consumer.

7 (3) A debt management services agreement shall be in
8 writing, signed by the licensee and the consumer, in plain
9 English and printed in at least 12-point type. It shall
10 contain at least the following information:

11 (i) The name, address and telephone number of the
12 consumer and of the licensee.

13 (ii) The license number of the licensee.

14 (iii) A description of the debt management services
15 to be provided to the consumer.

16 (iv) A description of the fees that will be charged
17 to the consumer.

18 (v) The name and address of the depository
19 institution where the trust account into which the
20 consumer's funds, paid to the licensee for disbursement
21 to the consumer's creditors, is located.

22 (vi) A list of each of the consumer's creditors that
23 the licensee in good faith reasonably expects to
24 participate in the licensee's management of the
25 consumer's debt, including the amount owed to each
26 creditor and the schedule of payments to be made to each
27 creditor. The schedule of payments shall include the
28 amount of each payment and the date on which it will be
29 made.

30 (vii) A list of each of the consumer's creditors

1 that the licensee in good faith reasonably expects not to
2 participate in the licensee's management of the
3 consumer's debt.

4 (viii) A schedule of the payments that the consumer
5 must make to the licensee, including the amount of each
6 payment, the date it is due and the form in which it must
7 be made.

8 (ix) Disclosure of any fees that either the consumer
9 must make to the licensee or that the licensee will
10 retain from each of the consumer's payments to the
11 licensee.

12 (x) A notice, in bold print, that the consumer's
13 participation in the debt management services agreement
14 may negatively impact the consumer's credit rating or
15 credit score.

16 (xi) Disclosure that the licensee may receive
17 compensation from the consumer's creditors for providing
18 debt management services to the consumer.

19 (xii) Notice that either party may terminate the
20 debt management services agreement upon ten days' written
21 notice to the other party.

22 (xiii) Notice that if the debt management services
23 agreement is terminated, the consumer is entitled to a
24 prompt refund of any payments made that have not yet been
25 disbursed to the consumer's creditors.

26 (xiv) An explanation of the way in which disputes
27 that arise under the debt management services agreement
28 will be resolved.

29 (xv) An explanation of applicable privacy laws.

30 (4) The licensee shall provide each consumer

1 participating in a debt management services agreement with
2 quarterly statements setting forth the payments received from
3 the consumer and the disbursements made to the consumer's
4 creditors.

5 (5) The licensee shall deposit a consumer's payment
6 under a debt management services agreement into the
7 licensee's trust account within two business days of
8 receiving the payment.

9 (6) The licensee shall disburse a consumer's funds to
10 the consumer's creditors in a timely manner pursuant to the
11 consumer's debt management services agreement.

12 (7) The licensee shall not purchase any debt or
13 obligation of a consumer.

14 (8) The licensee shall not lend money or provide credit
15 to a consumer.

16 (9) The licensee shall not offer or provide credit
17 insurance to a consumer.

18 (10) The licensee shall not obtain a mortgage or other
19 security interest in the property of a consumer.

20 (11) The licensee shall not operate as a collection
21 agency or debt collector.

22 (12) The licensee shall not structure a consumer's debt
23 management services agreement in a way that results in the
24 negative amortization of any of the consumer's debts.

25 (13) The licensee shall not compromise any debt of a
26 consumer unless the compromise benefits the consumer and the
27 consumer has approved the proposed compromise in writing.

28 (14) The licensee shall have written policies describing
29 its safeguards against conflicts of interest in the
30 conducting of its business.

1 (15) The licensee shall not disseminate information,
2 including by advertising, regarding its debt management
3 services in any way that is false, misleading or deceptive.

4 Section 12. Fees.

5 (a) Limitation.--A licensee may charge a fee of not more
6 than \$50 for an initial consultation with a consumer.

7 (b) Monthly maintenance fee.--When a consumer and a licensee
8 have entered into a debt management services agreement, the
9 licensee may charge the consumer a monthly maintenance fee not
10 to exceed \$10 times the number of creditors remaining under the
11 agreement for that month, provided that the total monthly fee
12 may not exceed \$50.

13 (c) Insufficient funds fee.--A licensee may charge a
14 consumer a reasonable fee for any payment made by the consumer
15 to the licensee that is dishonored for insufficient funds.

16 (d) Voluntary contributions prohibited.--A licensee shall
17 not require or accept a voluntary contribution from a consumer.

18 (e) No other fees permitted.--A licensee shall not charge a
19 consumer any fees other than those described in subsections (a),
20 (b) or (c).

21 (f) Actual costs.--A licensee may charge a consumer for its
22 actual cost in requesting the consumer's credit report.

23 Section 13. Violations.

24 The department may impose a civil penalty up to \$1,000 for
25 each violation of this act.

26 Section 14. Powers and duties of department.

27 The department shall:

28 (1) Examine any document, account, book or record of a
29 licensee or investigate as necessary to determine that the
30 licensee is in compliance with this act. The examination may

1 include documents, accounts, books or records that relate to
2 the operation of the licensee that are in the possession of
3 an affiliate, subsidiary or other business entity. The
4 examination may be conducted without prior notice to the
5 licensee and the costs of the examination shall be paid by
6 the licensee.

7 (2) Conduct administrative hearings on any matter
8 pertaining to this act, issue subpoenas to compel the
9 attendance of witnesses or the production of documents,
10 accounts, books or records at a hearing. A document, account,
11 book or record subject to subpoena may be retained by the
12 department until the proceeding in connection with which it
13 was subpoenaed is completed. A department official may
14 administer oaths or affirmations to a person whose testimony
15 is required.

16 (3) Request information from any Federal, State, local
17 or foreign government entity regarding an applicant, a
18 licensee or a person related to the business of debt
19 management services. The cost associated with the request
20 shall be paid by the applicant or licensee.

21 (4) Promulgate regulations or issue statements of policy
22 or orders to ensure the proper administration or enforcement
23 of this act.

24 (5) Prohibit a person who violates this act from working
25 in any capacity related to activities regulated by the
26 department.

27 (6) Order a person to make restitution for actual
28 damages to consumers caused by a violation of this act.

29 (7) Issue a cease and desist order that takes effect
30 immediately, but that is subject to a hearing within 14 days

1 of the issuance of the order.

2 (8) Impose other conditions or take other actions as the
3 department deems appropriate to administer or enforce this
4 act.

5 Section 15. Administrative proceedings.

6 (a) Hearings.--A person aggrieved by a decision of the
7 department may appeal the decision to the secretary. The appeal
8 shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to
9 practice and procedure of Commonwealth agencies).

10 (b) Injunctions.--The department may maintain an action for
11 an injunction or other process against a person to restrain or
12 prevent the person from violating this act.

13 (c) Final orders.--A decision of the secretary shall be a
14 final order of the department and shall be enforceable in a
15 court of competent jurisdiction.

16 (d) Appeals.--A person aggrieved by a decision of the
17 secretary may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A
18 (relating to judicial review of Commonwealth agency action).

19 Section 16. Banking Department Fund.

20 All fees or penalties collected by the department under this
21 act shall be deposited into the Banking Department Fund.

22 Section 17. Transition.

23 A person who provides debt management services before the
24 effective date of this section and seeks to continue providing
25 such services must submit an application for a license under
26 this act within 45 days of the effective date of this section.
27 The applicant may continue to provide debt management services
28 provisionally, according to the requirements of this act, while
29 the department processes the application for licensure.

30 Section 18. Effective date.

1 This act shall take effect in 60 days.